

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LAMONT BROUSSARD,

Plaintiff,

v.

PIERCE COUNTY JAIL *et al.*,

Defendants.

Case No. C04-5620RJB

ORDER ADOPTING
REPORT AND
RECOMMENDATION

This matter comes before the court on the Report and Recommendation of the magistrate judge. Dkt. 33. The court has considered the relevant documents and the remainder of the file herein.

On September 23, 2004, plaintiff filed this civil action, alleging that defendants violated his Eighth Amendment rights prohibiting cruel and unusual punishment in the provision of medical care to him while he was incarcerated at the Pierce County Jail. Dkt. 5. On March 21, 2005, plaintiff filed a motion for default because defendants had not filed an answer to the complaint. Dkt. 22. On April 15, 2005, defendants filed a motion to dismiss along with the answer to plaintiff's motion for default. Dkt. 27. In the motion to dismiss, defendants argued that the claims in the complaint are factually and legally insufficient. *Id.*

On May 20, 2005, the magistrate judge issued a Report and Recommendation, recommending that the court deny plaintiff's motion for default without prejudice and deny the motion to dismiss. Dkt. 33. On May 27, 2005, defendants filed an answer to the complaint. Dkt. 34.

1 **Motion for Default.** Default judgments are disfavored by the law and cases should be
2 decided on their merits except in extreme cases. *Mendoza v. Wight Vineyard Management*, 783 F.2d
3 941, 945-46 (9th Cir. 1986). In this case, defendants have filed an answer. Because the case should
4 be decided on its merits, plaintiff's motion for default should be denied.

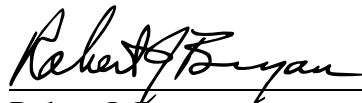
5 **Motion to Dismiss.** In their motion to dismiss, defendants contend that plaintiff's factual
6 allegations are insufficient to state an Eighth Amendment claim. The magistrate judge concluded
7 that plaintiff had set forth viable legal theories based upon the facts alleged in the complaint.
8 Defendants have not filed an objection to this conclusion. Defendants' motion to dismiss should be
9 denied.

10 Therefore, it is hereby

11 **ORDERED** that the Report and Recommendation of the magistrate judge (Dkt. 33) is
12 **ADOPTED**. Plaintiff's motion for default (Dkt.22) is **DENIED**. Defendants' motion to dismiss
13 (Dkt. 27) is **DENIED**.

14 The Clerk is directed to send uncertified copies of this Order to all counsel of record and to
15 any party appearing *pro se* at said party's last known address.

16 DATED this 24th day of June, 2005.

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19 Robert J. Bryan
20 United States District Judge
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